



# Legislative Research Council

## RULES REVIEW COMMITTEE MINUTES

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**Three hundred tenth meeting  
Monday  
December 20, 2010**

**Room 414  
State Capitol  
Pierre, South Dakota**

The three hundred tenth meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 10:00 a.m. CST, December 20, 2010, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 117, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; SD School of Mines & Technology, 501 E. St. Joseph St., Room CB 109, Rapid City, South Dakota; University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31<sup>st</sup> St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad, Jean Hunhoff (Vice-chair), and Mike Vehle; and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust. All members appeared via the DDN. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

### **Approval of Minutes**

*Representative Gibson moved, seconded by Senator Vehle, that the minutes of the November 17, 2010, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

### **Staff Report**

**Mr. Doug Decker** reported that the committee bill entitled "*An Act to permit the Interim Rules Review Committee to revert a rule if the rule imposes unreasonable costs.*" had been prefiled.

## Rules Reviewed

**Department of Human Services: Division of Developmental Disabilities** – Amend ICF/MR rules to clarify that only those behavior treatment plans that involve limitation need to be reviewed by the Human Rights committee and to provide criteria for rating the inventory for client and agency planning.

**Mr. Scott Pelham** reviewed the proposed rules regarding the Division of Developmental Disabilities.

*Representative Lust moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Human Services: Division of Developmental Disabilities. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Human Services: Division of Mental Health** – Amend Mental Health rules to repeal outdated and unused rules; amend rules to ensure the highest quality of service delivered with the least amount of administrative burden on the mental health centers and better reflect quality improvement efforts and current practices; realign chapters for consistency with administrative rules for alcohol and drug providers that are also mental health providers; update the chapter in current rules on community mental health center services that has become core service responsibilities to reflect current practices; modify safety, sanitation, and physical facilities standards to reflect current standards and expectations and has been renamed environmental sanitation safety and fire prevention; approval requirements has become accreditation and has been modified to align with similar requirements for alcohol and drug providers; the new section on personnel combines relevant information from other areas of current administrative rules and logically and clearly organizes it; modifies requirements for staff providing direct services and orientation of personnel to reflect current expectations; organize clinical procedures for mental health services including all clinical requirements for program areas; modify the services areas (Outpatient, CYF, CARE, and IMPACT) to better reflect current practice; and modify PASRR to better reflect federal regulations and make the rules more clear and concise.

**Ms. Amy Iversen-Pollreis** reviewed the proposed rules regarding the Division of Mental Health.

Committee members recommended that the department promulgate additional rules to include a specific degree requirement for the executive director and a specific time frame be included in the grievance procedure rules.

*Representative Gibson moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Human Services: Division of Mental Health. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Human Services: Certification Board for Alcohol and Drug Professionals** – Adopt rules to remove outdated language throughout this article and clarify procedures and deadlines for the application process, recognition and certification process, renewal and upgrade process, and continuing professional training process; add corresponding acronyms being adopted by the International Certification & Reciprocity Consortium (IC&RC); repeal bachelor's level trainee recognition; repeal case presentation method oral examination and evaluator; change titles and definitions for prevention specialist domains and 12 core functions to coincide with IC&RC terminology; add statements saying Code of Ethics and applications are available at no cost on CBADP website; add requirement saying board may deny, suspend, or revoke status or pursue legal action if inaccurate information is reported on applications; add new subdivisions that address residency requirement, child support arrearage and board process for review of applications; add requirement that all fees are non-refundable; simplify the fee schedule and clarify current practice of pro-rating fees for initial trainee recognition; add \$100 mailing label fee as documented in statutes; modify academic and experience requirements for CCDC I, II, III, and CPS to correspond with IC&RC requirements; clarify current practice of requiring a minimum of three semester hours and a grade of "C" or higher for each course requirement; add new subdivision that reflects current practice of board approving all courses; clarify supervision hours, methods of observation and compliance with code of ethics; remove 12 step philosophies and clarify supervisor's role in providing guidance to trainees; clarify current practice that trainee may not be supervised by a relative; repeal subdivisions requesting extensions and waivers throughout this article and replace with § 46:33:09:15; clarify retesting requirements; clarify that a list of approved continuing education activities is available upon request; repeal continuing professional training requirement for trainees; repeal fifty percent maximum restriction on continuing professional training from practitioner's employer and fifty percent maximum from internet or other on line education; clarify current practice that patient lectures or public education lectures may not be used to meet teaching and training requirements; repeal 30-day grace period; add requirement that trainees who lapse in status must wait 15 days before being allowed to reapply for recognition; add requirement that chemical dependency trainees who haven't completed the required three courses within two years, must complete the course work before being allowed to reapply for recognition; add statement reflecting current practice that professionals on retirement status pay half the renewal fee; clarify that practitioners on inactive status are not eligible for reciprocity; clarify that trainees on inactive status do not pay renewal fees and may not actively practice in the field; and add condition that board will not accept appeals of denial for certification based solely on the inability of the candidate to pass the written examination.

**Mr. Robert Bogue**, Canton, Chair of the Board, reviewed the proposed rules.

Following a brief discussion of the substantive distinctions between a certified chemical dependency counselor trainee and levels I, II, and III, it was the consensus of the committee that there needs to be more distinction between the different levels of licensing. It was also noted that the definition of "student" trainee should be addressed in statute.

*Representative Hunt moved, seconded by Representative Lust, to return the rules proposed by the Department of Human Services: Certification Board for Alcohol and Drug Professionals back to a prior step for further work on the distinction between a trainee and the three categories of a chemical dependency counselor. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Board of Chiropractic Examiners** – Amend rules to delete language regarding inactive chiropractor from the definitions; update educational institution requirements and delete obsolete information regarding the same; clarify rules for reciprocity provisions; update rules for reactivation of inactive license; establish a rule for activating a lapsed license; modify language regarding inactive license fee; amend a rule regarding Code of Ethics and update disciplinary procedures.

**Ms. Marcia Walter**, Yankton, Executive Director, and **Mr. Andrew Marshall**, Yankton, Attorney for the Board, reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Health: Board of Chiropractic Examiners. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Health: Board of Examiners in Optometry** – Amend rules to increase the number of hours of continuing education credits required for renewal of optometric license, and to establish classifications of self-directed learning and number of hours of continuing education credits allowed for each.

**Ms. Naomi Cromwell**, Pierre, Attorney for the Board, reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Health: Board of Examiners in Optometry. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Social Services: Medical Programs** – Amend ICF-MR/DD rules to amend definitions; update utilization review provisions; clarify that payment will not be allowed for reserved bed days; remove obsolete ICAP and on-site review requirements; and remove unnecessary and duplicative claim requirements.

**Ms. Laura Ringling** reviewed the proposed rules.

*Senator Hundstad moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Social Services: Medical Programs. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Agriculture: South Dakota Oilseeds Council** – Amend rules to update the collection, remittance, enforcement, and refund procedures for the Oilseeds Council.

**Mr. Rick Vallery**, Pierre, Executive Director of the Council, reviewed the proposed rules.

*Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Agriculture: South Dakota Oilseeds Council. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Revenue and Regulation: Commission on Gaming** – Amend Gaming rules to provide a list of the variations of blackjack authorized for play; add several variations of poker that have been previously authorized for play in Deadwood; and allow a progressive side bet variation of play for Let it Ride Poker, Caribbean Stud Poker, Four-Card Poker, Texas Hold'em Bonus Poker, Mississippi Stud Poker, and Ultimate Texas Hold'em Poker.

**Mr. Mike Shaw**, Pierre, Attorney for the Commission, and **Mr. Kyle Samuels**, St. Cloud, Minnesota, representing Shuffle Master, Inc., reviewed the proposed rules.

*Representative Gibson moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation: Commission on Gaming. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Revenue and Regulation: Division of Insurance** – Amend rules to set forth minimum loss ratios for health insurance and to establish a refund formula.

**Mr. Randy Moses** reviewed the proposed rules.

*Senator Vehle moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Attorney General: Law Enforcement Officers Standards Commission** – Adopt rules to establish a county coroner training program.

**Mr. Paul Bachand**, Pierre, Attorney for the Commission, and **Mr. Jon Bierne** reviewed the proposed rules. Following a brief discussion, it was the recommendation of the committee that the commission should provide more detail regarding the training program requirements.

*Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Attorney General: Law Enforcement Officers Standards Commission. Motion prevailed on a roll call vote with 5 ayes, 1 nay. Members voting aye: Gibson, Hundstad, Hunhoff, Lust, and Vehle. Member voting nay: Hunt.*

**Attorney General: 24/7 Sobriety Program** – Amend rules to provide a definition for the term "ignition interlock device;" provide additional enrollment requirements for ignition interlock device testing; provide for allowing more use of electronic alcohol monitoring devices and permit the use of an ignition interlock device for use in the 24/7 sobriety program; revise the situations in which electronic alcohol monitoring device testing may be utilized and provide requirements for the use of ignition interlock testing; set minimum requirements for electronic monitoring devices; set minimum requirements for ignition interlock device testing; make certain that only approved devices are utilized in the 24/7 sobriety program; require all participants utilizing ignition interlock devices to pay all costs and expenses associated with the installation and operation of the device; and provide that 24/7 program participants utilizing ignition interlock devices pay all costs and expenses to the authorized ignition interlock vendor.

**Mr. Bachand** and **Mr. Jeff Hallem** reviewed the proposed rules. A presentation was given on the interlock device and how it could be used as a pilot project for the 24/7 sobriety program. The committee discussed recent legislative proposals to implement the use of interlock devices in the 24/7 program. The committee noted that the legislative proposals had failed. Thus it was the consensus of the committee that the use of an interlock device should be provided for through legislation as opposed to implementing the program through rule-making.

*Representative Hunt moved, seconded by Representative Gibson, to revert the rules proposed by the Attorney General: 24/7 Sobriety Program back to a prior step in the rule-making process because the proposed rules were not consistent with expressed legislative intent. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Education: Board of Education** – Amend a rule to require the curriculum must provide not less than 15 semester credits in general education and not less than 50 percent of the credit hours in technical education.

**Mr. Mark Wilson** reviewed the proposed rules.

### **Public Testimony**

**Mr. Greg Von Wald**, Mitchell, President of the Mitchell Technical Institute, spoke in support of the proposed rules.

*Representative Gibson moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Education: Professional Administrators Practices and Standards Commission** – Amend a rule to allow the Professional Administrators Practices and Standards Commission to address ethical violations occurring three years prior to the filing of a complaint.

**Mr. Bachand** reviewed the proposed rule.

*Representative Gibson moved, seconded by Senator Hundstad, to approve the rule proposed by the Department of Education: Professional Administrators Practices and Standards Commission. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

**Department of Game, Fish and Parks** – Adopt a Refuges rule to establish a refuge in Hand County to be known as the Wall Lake State Game Refuge; amend a Hunting Requirements and Prohibited Methods rule to remove the language which limits the caliber size of muzzleloading firearms used in the hunting of wild turkeys; amend Spring Wild Turkey Hunting Season rules to establish season dates, requirements and restrictions; change the opening date for the archery hunting season only to the first Saturday in April; establish the number of licenses/tags available which will include offering residents 200 more one-tag "male turkey" and 50 less two-tag "any turkey" licenses for the Prairie Units than authorized in 2010 for an overall increase of 76 tags; and amend a Custer State Park Spring Wild Turkey Hunting Season rule to establish season dates, requirements and restrictions, establish the number of available licenses, and change the end date of the season from the third Sunday of May to the eighth day prior to Memorial Day.

**Mr. Tony Leif** reviewed the proposed rules.

The committee discussed the 2010 legislation which removed the Wall Lake State Game Refuge from the Code. Some members considered it to be inconsistent to recreate the refuge in rule. Representative Gibson explained that the surrounding landowners have asked the department to reestablish the refuge and all of the landowners concurred to this action. Chair Vehle asked for a separate vote on the refuge rule.

*Representative Gibson moved, seconded by Senator Hundstad, to approve the refuge rule proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 4 ayes, 2 nays. Members voting aye: Gibson, Hundstad, Hunhoff, and Vehle. Members voting nay: Hunt and Lust.*

*Representative Lust moved, seconded by Senator Hunhoff, to approve the remaining rules proposed by the Department of Game, Fish and Parks. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

### **Adjournment**

*Senator Hundstad moved, seconded by Representative Gibson, that the meeting be adjourned. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.*

Chair Hunt adjourned the meeting at 2:38 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.aspx>).